

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SEAN D. MOON,

Plaintiff,

v.

CAROLYN W. COLVIN, Commissioner
of Social Security,

Defendant.

CASE NO. C11-5230 RJB-KLS

ORDER ON REPORT AND
RECOMMENDATION GRANTING
IN PART PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES, COST,
AND EXPENSES PURSUANT TO 28
U.S.C. § 2412

This matter comes before the court on the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 34). The court has considered the relevant documents and the remainder of the file herein.

On February 14, 2014, Plaintiff filed this Motion for Attorney's Fees, Cost, and Expenses, arguing that Defendant's position was not substantially justified, that an award of attorney's fees would serve the purposes of the (EAJA), and that there are no special circumstances that render an award unjust. Dkt. 31. Plaintiff requested \$17,127.25 in attorney's fees, \$486.50 in costs, and \$163.24 in expenses. *Id.* at 1.

ORDER ON REPORT AND RECOMMENDATION
GRANTING IN PART PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES, COST, AND
EXPENSES PURSUANT TO 28 U.S.C. § 2412- 1

1 On March 3, 2014, Defendant responded that attorney's fees are not warranted, or in the
2 alternative, that the requested fees should be reduced to a reasonable amount. Dkt. 32.
3 Defendant proposed an approximately 60% reduction in hours. *Id.* at 11. Defendant had no
4 objection to the costs and expenses proposed by Plaintiff. *Id.*

5 On April 1, 2014, Magistrate Judge Strombom issued this Report and Recommendation,
6 recommending that the court grant in part Plaintiff's Motion for Attorney's Fees, Cost, and
7 Expenses Pursuant to 28 U.S.C. §2412 (Dkt. 31) to the extent that Plaintiff is entitled to
8 attorney fees of \$15,628.59, costs of \$486.50, and expenses of \$163.24. Dkt. 34 at 1. Judge
9 Strombom reasoned that the administrative record in this case was fairly lengthy and there is no
10 indication of bad faith by Plaintiff raising several issues on appeal. *Id.* at 4–12. However, Judge
11 Strombom also found that the number of hours that Plaintiff's counsel billed for the Ninth
12 Circuit brief was unreasonable (37.1 hours), based on the substantial similarity between that brief
13 and the pre-appeal briefing for the district court. *Id.* Accordingly, Judge Strombom reduced the
14 requested hours by 30%. *Id.* at 13. The parties were given fourteen days to provide their
15 objections.

16 On April 15, 2014, Plaintiff objected that Judge Strombom miscalculated the amount of
17 hours spent "drafting and editing the opening brief" to the Ninth Circuit because Plaintiff's
18 counsel spent only 22.2 hours, but Judge Strombom stated it took 37.1 hours. Dkt. 35. Plaintiff
19 did not object on any other grounds. *Id.*

20 On April 29, 2014, Defendant responded that the Magistrate Judge correctly reduced the
21 hours and that 30% of Plaintiff's time spent preparing Ninth Circuit briefs should be deducted.
22 Dkt. 36.
23
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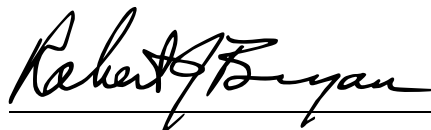
The court reviewed the record and it appears that Plaintiff only spent 22.2 hours on the opening brief. *See* Dkt. 31-3 at 2 (sum of 6.2 hours, 6.5 hours, and 9.5 hours). However, Judge Strombom also included the 16.9 hours spent by Plaintiff's counsel on the reply brief. *See id.* (sum of 7.1 hours and 9.8 hours); Dkt. 34 at 14 n.7. It appears that Judge Strombom intended to refer to the time spent preparing both the opening and reply as unreasonable (a total of 39.1 hours). Upon an independent review of the record, the time spent on both briefs respectively seems unreasonable given the substantial similarity to previously prepared briefing. Therefore, the court should grant Plaintiff's motion with the appropriate reduction of \$2,059.72 (11.1 hours), for a total of \$15,628.59 in attorney fees.

Accordingly, it is hereby **ORDERED** that:

1. Plaintiff's Motion for Attorney's Fees, Cost, and Expenses Pursuant to 28 U.S.C. §2412 (Dkt. 31) is **GRANTED**.
2. Plaintiff is **AWARDED** EAJA fees in the amount of \$15,628.59 in attorney fees, \$486.50 in costs, and \$163.24 in expenses, pursuant to 28 U.S.C. § 2412(d). If the Commissioner determines that the EAJA award is not subject to any offset under the Treasury Offset Program, as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010), the check shall be made payable to Plaintiff's attorney, Eitan Kassel Yanich.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 29th day of April, 2014.



ROBERT J. BRYAN
United States District Judge